

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VERITEXT/ PA REPORTING COMPANY	:	
L.L.C., t/a RSA	:	CIVIL ACTION
	:	
v.	:	NO. 03-6533
	:	
E-REPORTING STENOGRAPHIC AFFILIATES	:	
OF PENNSYLVANIA INC., <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

December 5, 2006

Plaintiff Veritext/PA Reporting Company, L.L.C., t/a RSA (“Plaintiff” or “Veritext”) brings this action against E-Reporting Stenographic Affiliates of Pennsylvania, Inc. (“ERSA”), F. David Damiani, Laura Grosso, Carmella Mazza, and Richard J. Coleman (collectively, “Defendants”) alleging violations of the Lanham Act, common law trademark infringement, unfair competition, breach of duty of loyalty (against Grosso, Mazza, and Coleman), tortious interference with existing and prospective contractual relations, conversion (against Grosso, Mazza, Coleman, and Damiani), and commercial disparagement. Now before the Court is Plaintiff’s Motion to Enforce Settlement according to terms allegedly agreed to by the parties. The Court heard oral argument on this matter on November 29, 2006.¹ For the reasons that follow, Plaintiff’s Motion will be denied.

¹ A hearing must be held when there is a dispute regarding the existence of a settlement. See Tiernan v. Devoe, 923 F.2d 1024, 1031 (3d Cir. 1991); Brannam v. Reedy, 906 A.2d 635, 638 (Pa. CmwltH Ct. 2006).

I. BACKGROUND

In April 1998, Plaintiff acquired all the assets of Reporting Service Associates, Inc. (aka RSA), including the trade name and service mark “RSA,” as well as its accompanying goodwill. See Comp. at ¶ 9. Plaintiff commenced the instant action on December 3, 2003, alleging that Grosso, Mazza, Coleman, and Damiani made arrangements in October 2003 to form ERSA, a competing stenographic reporting agency, while still employed by Plaintiff. See id. at ¶ 27.

Plaintiff filed a Motion for Partial Summary Judgment (the “Summary Judgment Motion”) in May 2005. While that Motion was pending, counsel for the parties participated in settlement discussions. See Plaintiff’s Motion to Enforce Settlement (“Motion” or “Mot.”) at 2; Defendant’s Response in Opposition to the Motion to Enforce Settlement (“Opposition” or “Opp.”) at 3. On June 15, 2005, Defendants’ counsel, Michael A. Meehan, sent Plaintiff’s counsel, Michael S. Hino, an email (the “June 15 email”) which stated:

Please let this email confirm our conversation of Tuesday morning. The parties have reached a settlement [sic] agreement in principle. In exchange for \$100,000, Plaintiff will resolve all of the claims set forth in the complaint in this matter. We have discussed that releases will be signed in favor of the individual defendants, and that the plaintiff may possibly [sic] execute a Covenant Not to Sue in favor of ERSA. It is our understanding that plaintiff will drop the demand for a name change in this matter, but that litigation against Lee Goldstein and claims against Ed Tuite will survive. We also discussed the need to extinguish the vicarious liability [sic] ERSA may have for claims against Mssrs. Goldstein and Tuite. You agreed to take a shot at drafting a settlement agreement.

We had hoped to hammer out the agreement this week. I will be out of the office tomorrow in the afternoon, and in depositions most of the day on Friday. Do you know when you plan on providing us with a proposed settlement agreement and release.

Mot. at Exhibit A (emphasis supplied).

By letter dated June 29, 2005, Defendants' counsel informed the Court that "the parties have reached an agreement in principle to settle this matter," and that they were "exchanging draft settlement agreements." Mot. at Exhibit B. He requested that the Court "withhold any decision on the Motion for Partial Summary Judgment until such time as either a settlement is reached, in which case the Motion will be moot, or the settlement breaks down and [they] are given the opportunity to brief the issues raised in the Plaintiff's Reply." Id.

Plaintiff's counsel drafted a proposed settlement agreement which allegedly incorporated all the agreed-upon terms, and sent the draft to Defendants for their review and signature. See Mot. at 3. Plaintiff contends that after receiving the draft, Defendants sought to include additional terms that had not been agreed upon by the parties. See id. Specifically, Defendants insisted that any covenant not to sue or release include claims involving or related to Ed Tuite and Lee Goldstein.² See id.

Plaintiff filed the instant Motion to Enforce Settlement on December 29, 2005. Emails and draft agreements exchanged by counsel for the parties reveal that both sides continued to explore the possibility of settlement even after the Motion was filed. See Opp. at Exhibits B, C, D, E; Reply at Exhibit K; Plaintiff's Nov. 29, 2006 Hearing Exhibits ("Hearing Exhibits") L, M, N, O, P, Q.

² Plaintiff's Reply in Support of the Motion to Enforce Settlement ("Reply") attaches a draft complaint against Ed Tuite that indicates Lee Goldstein sold RSA to Veritext. See Reply at Exhibit K. Tuite is identified as an attorney who provided Goldstein with legal advice, continued to provide RSA with legal advice following the sale, and allegedly helped the named defendants in this case form ERSAs while he was still working for RSA. See id. Counsel for Plaintiff indicated at oral argument that the draft complaint against Tuite was never filed, but that there is a state court action currently pending against Goldstein.

II. LEGAL STANDARD

Under Pennsylvania law, “[a]n agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of writing.” Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970); Raie v. City of Philadelphia, 2003 U.S. Dist. LEXIS 6602, at *6-7 (E.D. Pa. April 1, 2003); Orta v. Conway Transp., et al., 2002 U.S. Dist. LEXIS 19302, at *2-3 (E.D. Pa. Oct. 8, 2002) (“[A] settlement agreement does not need to be reduced to writing to be enforceable”) (citations omitted). A trial court before whom a case is pending may enforce a settlement agreement voluntarily undertaken and assented to by the parties. See Raie, 2003 U.S. Dist. LEXIS 6602, at *7 (citing Morris v. Gaspero, 522 F.Supp. 121, 125 (E.D. Pa. 1981)).

Settlement agreements are interpreted according to traditional principles of contract law. See Orta, 2002 U.S. Dist. LEXIS, at *3. Pennsylvania recognizes and enforces oral contracts between parties. See id. (citations omitted); Frank v. Nostalgia Network, 1997 U.S. Dist. LEXIS 942, at *5 (E.D. Pa. Jan. 30, 1997). The fact that the parties to an oral contract intended to formalize their agreement with a writing “does not negate the binding nature of the original agreement.” Id. at *4; Mazzella v. Koken, 739 A.2d 531, 536 (Pa. 1999). Moreover, the inability of parties to an oral contract to reduce it to writing after several attempts does not necessarily preclude a finding that the contract was binding. See Mazzella, 739 A.2d at 536. However, in order for an oral agreement to be binding, “the minds of the parties should meet upon all the terms, as well as the subject-matter, of the [agreement].” Id. If there are “ambiguities and undetermined matters” which render the agreement impossible to understand and enforce, it must be set aside. Id. at 537.

“When oral contracts are disputed, the issues of what was said, done, and agreed upon by the parties are ones of fact to be determined by the fact finder.” Krebs v. United Ref. Co. of Pennsylvania, 893 A.2d 776, 783 (Pa. Super. Ct. 2006). The intent of the parties is also an issue “reserved to the province of the fact finder.” Id. “[I]f evidence of the contract is not an integrated document, and moreover, one partly or wholly composed of oral communications, the precise content of which is not of record,” then the fact finder must look to the surrounding circumstances as well as the course of dealings between the parties. Westinghouse Elec. Co. v. Murphy, Inc., 228 A.2d 656, 659 (Pa. 1967) (internal citations omitted).

III. ANALYSIS

Plaintiff contends that the various emails, letters, and draft settlement agreements exchanged by counsel for the parties establish a meeting of the minds on the material terms of a binding agreement reached in early June 2005. See Reply at 2-3. In response, Defendants argue that the parties never agreed on all the material terms of the settlement. See Opp. at 1, 2. Specifically, they claim that the parties never agreed to the language or breadth of a release and/or a covenant not to sue with respect to ERSA. Opp. at 4. Defendants also assert that the parties understood that their oral discussions regarding settlement would be memorialized in writing and approved by each party before either party would be bound. See Opp. at 1.

After examining the evidence presented and considering the arguments submitted by the parties, the Court concludes that the parties never reached a meeting of the minds on all of the essential terms of a settlement agreement. See, for example, Mot. at Exhibit B (“The parties are exchanging draft settlement agreements ... we ask that your Honor kindly withhold any decision on the Motion for Partial Summary Judgment until such time as a settlement is reached ... or the

settlement breaks down”). The June 29 letter to this Court, which was never repudiated by Plaintiff, thus specifically stated that final settlement had not yet been reached and contemplated the possibility that settlement discussions might break down. See Mot. at Exhibit B.

The parties have never had a “meeting of the minds” regarding at least one material term of the settlement – the extent of the covenant not to sue or release to be given ERSA.³ The June 15 email states that Plaintiff “may possibly execute a Covenant Not to Sue in favor of ERSA,” thus indicating that the parties had not yet finalized the terms of this material provision in any settlement. Mot. at Exhibit A (emphasis supplied). Moreover, the various drafts submitted to the Court as exhibits reveal numerous language changes to the contemplated ERSA release which alter both the scope and potential future effect of the release. For example, the initial draft sent by Plaintiff’s counsel to Defendants’ counsel states that Plaintiff will not in any future proceeding “assert any Claims against ERSA that were asserted or could have been asserted in the Action.” Mot. at Exhibit C. The mark-up sent back by Defendants adds language that also prohibits Plaintiff from asserting “any claims based on the same set of operative facts as those involved in the Action.” Reply at Exhibit J. A January 2006 draft prohibits Plaintiff from bringing either “(A) known or unknown claims (1) which were or could have been asserted in the Action or (2) which are in any way related to, or based on the same set of operative facts as the Action, the Goldstein Complaint, and/or the Tuite claims; and (B) any and all claims that are known to [Plaintiff], or in the exercise of ordinary care should have been known to [Plaintiff] as

³ The parties apparently do not even agree as to whether the provision should be a “covenant not to sue” or a “release.” For purposes of this Memorandum, the Court will refer to the term in dispute as a release.

of the date of this Agreement without regard to whether they are related to the matters identified in (A)(1) and (A)(2) above.” Hearing Exhibit L.

In addition to the disagreements with respect to the scope of any ERSA release, the parties also disagree as to the language to identify the parties to be covered by such a release. Plaintiff stated at oral argument that it will not accept language in a release which would bar claims against Goldstein, the majority shareholder and chief executive officer of ERSA, in its state court action against him. Defendants, on the other hand, reject any language in a release that might prejudice Goldstein in the state court action. Neither party has been satisfied with the alternatives proposed thus far. “The parties’ failure to resolve [a] crucial term renders their tentative agreement impossible to interpret and/or to enforce.” Porreco, 761 A.2d at 633; see also Krebs, 893 A.2d at 785 (“As the proposed settlement agreement lacked necessary terms, the trial court was prohibited from ‘filling these terms in’ and enforcing an agreement of its own devising”) (citations omitted). In short, the Court cannot write a settlement agreement for the parties when they have failed to reach a meeting of the minds on a term as fundamental as the release.

IV. CONCLUSION

For the aforementioned reasons, Plaintiff’s Motion to Enforce Settlement will be denied. An appropriate order follows.

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OF PA INC., <u>et al.</u>	:	

ORDER

AND NOW, this 5th day of December, 2006, upon consideration of Plaintiff's Motion to Enforce Settlement (docket no. 35), Defendant's Opposition thereto (docket no. 40), Plaintiff's Reply (docket no. 42), and oral argument, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.